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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,448	09/06/2006	Sabrina Higgins	102792-609 (11382P1 US)	1281

27389 7590 10/09/2009

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EXAMINER	
ROONEY, NORA MAUREEN	
ART UNIT	PAPER NUMBER
1644	

MAIL DATE	DELIVERY MODE
10/09/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/597,448	HIGGINS ET AL.	
	Examiner	Art Unit	
	NORA M. ROONEY	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 July 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *See Continuation Sheet*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :07/26/2006, 08/23/2006, 10/11/2006.

DETAILED ACTION

1. Applicant's election with traverse of the species of citrus oil in the reply filed on 07/02/2009 is acknowledged. The traversal is on the ground(s) that "First, it is pointed out that MPEP 1850 (II) provides that: "Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims. * * * If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity of invention arises in respect of any claims that depend on the independent claims." Accordingly, the Examiner's focus on dependent claims 7 and 16 under the PCT standard is presumptively improper; the proper focus is on the independent claims present in the application. Second, it is believed that the would be no undue burden on the part of the Examiner to perform a concurrent search and examination of the oils presented in claims 7 and 16, both dependent claim, in considering the patentability of the independent claims. Consequently, the applicant asserts that the species satisfy the criteria for unity of invention under the PCT and thus, the Examiner's present restriction requirement/election of species requirement is improper and should be withdrawn." This is not found persuasive because contrary to Applicant's assertion a species requirement is always proper when the different methods require different ingredients and method steps, which makes the methods patentable distinct. In addition, it is a burden to search more than one species.

The requirement is still deemed proper and is therefore made FINAL.

2. Upon further consideration, the Examiner has also extended the species to cover orange oil, terpene hydrocarbon and β-pinene in addition to citrus oil.

3. Applicant's IDS documents filed on 07/26/2006, 08/23/2006 and 10/11/2006. Documents without authors and publication dates have been crossed out.

4. Claims 1-19 are currently under examination as they read on a method for treating an allergen-contaminated inanimate substrate comprising: dispersing an allergen-reducing amount of an allergen-deactivating compound comprising orange oil, terpene hydrocarbon, β-pinene or citrus oil dispersed into an airspace in at which an allergen-contaminated inanimate substrate is located, to provide achieve a prolonged reduction in the allergen loading of the substrate, wherein the reduction after 14 days is at least as great as the initial reduction of claim 1.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No.10/595,767 Although the conflicting claims are not identical, they are not patentably distinct from each other because instant claims 1-19 are directed to a method for treating an allergen-contaminated inanimate substrate comprising: dispersing an allergen-reducing amount of an allergen-deactivating compound dispersed into an airspace in at which an allergen-contaminated inanimate substrate is located, to provide achieve a prolonged reduction in the allergen loading of the substrate, wherein the reduction after 14 days is at least as great as the initial reduction of claim wherein the deactivant is selected from: a citrus oil including orange oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grass or a component thereof and claim 1-12 of Application 10/595,767 are directed to a method of deactivating an allergen, the method comprising: dispersing into an airspace capable or able to support said allergen an allergen- deactivating amount of a deactivant an allergen deactivating compound comprising one or more of the following materials: a citrus oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grass.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No.10/597,463. Although the conflicting claims are not identical, they are not patentably distinct

from each other because instant claims 1-19 are directed to a method for treating an allergen-contaminated inanimate substrate comprising: dispersing an allergen-reducing amount of an allergen-deactivating compound dispersed into an airspace in at which an allergen-contaminated inanimate substrate is located, to provide achieve a prolonged reduction in the allergen loading of the substrate, wherein the reduction after 14 days is at least as great as the initial reduction of claim wherein the deactivant is selected from: a citrus oil including orange oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grass or a component thereof and claims 1-13 of Application 10/597,463 are directed to a method of deactivating an allergen from the mite species Der fl or Der pl, the method comprising the step of: dispersing into an airspace an allergen-deactivating amount of an allergen- deactivating compound, said compound being provided in the form of an oil-in- water emulsion comprising at least 8% weight of a deactivant comprising one or more of the following materials: a citrus oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grass, said emulsion being dispersed into the airspace as a vapour.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3-8 and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by GB Patent Application Publication 2 367 243 (Reference 11; IDS filed on 07/26/2006).

GB Patent Application Publication 2 367 243 teaches a method for treating a dust mite allergen-contaminated inanimate substrate comprising: dispersing an allergen-reducing amount of an allergen-deactivating compound comprising a volatile oil such as terpene hydrocarbon into an airspace using heat by a candle up to 10 hours into an airspace in which an allergen-contaminated inanimate substrate (floor, tray) is located, to provide achieve a prolonged reduction in the allergen loading of the substrate (In particular, abstract, Examples 1 and 2, whole document).

The recitation of "wherein the reduction after 14 days is at least as great as the initial reduction" of claim 1; and "wherein the reduction after 28 days is at least as great as the initial reduction" of claim 11 is inherent. The same method is being performed, so the result is inherent.

The recitation of "wherein the deactivant dispersed into the airspace is as a vapour" of claims 3 and 12 is inherent in the method of dispersing the terpene hydrocarbon into an airspace using heat by a candle, particularly when using a gel candle as taught on page 3, lines 13-30.

The reference teachings anticipate the claimed invention.

10. Claims 1, 3-8 and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 01/76371 (Reference 2; IDS filed on 07/26/2006).

WO 01/76371 teaches a method for treating an dust mite allergen-contaminated inanimate substrate comprising: dispersing as a vapour an allergen-reducing amount of an allergen-deactivating compound comprising a volatile oil such as terpene hydrocarbon into an airspace using heat by an oil burner or candle up to 10 hours into an airspace in which an allergen-contaminated inanimate substrate (floor, tray) is located, to provide achieve a prolonged reduction in the allergen loading of the substrate (In particular, abstract, page 2, lines 11-13 and 17-20, page 5, line 11 to page 6, line 17, page 8, line 1, page 10, line 18, figure 1, figure 3Examples 1-10, claims 1-11, whole document).

The recitation of "wherein the reduction after 14 days is at least as great as the initial reduction" of claim 1; and "wherein the reduction after 28 days is at least as great as the initial reduction" of claim 11 is inherent. The same method is being performed, so the result is inherent.

The reference teachings anticipate the claimed invention.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 1, 9, 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over . GB Patent Application Publication 2 367 243 (Reference 11; IDS filed on 07/26/2006) or WO 01/76371 (Reference 2; IDS filed on 07/26/2006) each in view of WO 03/070286 (Reference 4; IDS filed on 07/26/2006).

GB Patent Application Publication 2 367 243 and WO 01/76371 have both been discussed *supra*.

The claimed invention differs from the prior art in the recitation of "wherein the deactivant comprises β-pinene" of claims 9 and 19.

WO 03/070286 discloses a composition that is effective for control of dust mite allergens within a space (In particular, page 5, lines 14-15; page 8, lines 7-9 and lines 20-27, whole document). The composition contains a terpene which may be pinene (In particular, page 9, lines 4-11).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use pinene as the terpene of GB Patent Application Publication 2 367 243 or WO 01/76371 since WO 03/070286 teaches that pinene is effective for controlling dust mite allergens.

From the reference teachings, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

13. Claims 1, 10-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over . GB Patent Application Publication 2 367 243 (Reference 11; IDS filed on 07/26/2006) or WO 01/76371 (Reference 2; IDS filed on 07/26/2006) each in view of U.S. Patent 6,500,445 (Reference 1; IDS filed on 07/26/2006).

GB Patent Application Publication 2 367 243 and WO 01/76371 have both been discussed *supra*.

The claimed invention differs from the prior art in the recitation of wherein the deactivant comprises orange oil or a component thereof of claims 10 and 19.

U.S. Patent 6,500,445 discloses a composition comprising a terpene-containing essential oil such as orange oil for effective, non-toxic control of dust mite allergens within a space (In particular, abstract, column 2, lines 48-62, whole document).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use orange oil as the terpene-containing essential oil of GB Patent Application Publication 2 367 243 or WO 01/76371 since U.S. Patent 6,500,445 teaches that terpene-containing essential oils such as orange oil are effective, non-toxic control of dust mite allergens.

From the reference teachings, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

14. No claim is allowed.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nora M. Rooney whose telephone number is (571) 272-9937. The examiner can normally be reached Monday through Friday from 8:30 am to 5:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-

0735. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 1, 2009

Nora M. Rooney

Patent Examiner

Technology Center 1600

/Nora M Rooney/

Examiner, Art Unit 1644